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(Cite as: 1994 WL 762882 (Mo.P.S.C.))			

Re Tartan Energy Company, L.C. dba Southern Missouri Gas Company
Case No. GA-94-127

Missouri Public Service Commission
September 16, 1994

APPEARANCES: James M. Fischer, Attorney at Law, 102 East High Street, Suite 200, Jefferson City, Missouri 65101, For Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company. Gary W. Duffy and Sondra B. Morgan, Attorneys at Law, Brydon, Swearingen & England, P. O. Box 456, 312 East Capitol, Jefferson City, Missouri 65102, For Missouri Gas Energy. Richard W. French, Attorney at Law, French & Stewart Law Offices, 1001 East Cherry Street, Suite 302, Columbia, Missouri 65201 For Brotherton Propane, PB's Propane and West Plains Propane, Inc. James F. Mauze' and Thomas E. Pulliam, Attorneys at Law, Ottsen, Mauze' and Building, 112 South Hanley Road, St. Louis, Missouri 63105- 3418 For Missouri Gas Company. Bruce A. Connell, Attorney at Law, 600 North Dairy Ashford, ML 1034, Houston, Texas 77079, For Conoco Inc. John Landwehr, Associate Counsel, Cook, Vetter and Doerhoff, 231 Madison Street, Jefferson City, Missouri 65101, For Brooks Gas Company, Conoco Inc., Empiregas Inc. of Ava, Empiregas Inc. of Birch Tree, Empiregas Inc. of Houston, Empiregas Inc. of Mountain Grove, Empiregas Inc. of Springfield, Empiregas Inc. of West Plains, Garrett's Propane Gas Service, Glen's Propane Gas Service, Inc., Ozark Gas & Appliance Co., RPA, Inc., Red Top Gas, Inc., Rees Oil Company, Smith Gas Company, Synergy Gas Corporation of Ava, Synergy Gas Corporation of Farmingdale, NY, Synergy Gas Corporation of Gainesville, Synergy Gas Corporation of Mountain Grove, Synergy Gas Corporation of Republic, Synergy Gas Corporation of Seymour, Tri-County Gas Company of Seymour, Tri-County Gas Company and Turtle Utility Gas Inc. Susan A. Anderson, Assistant Public Counsel, P. O. Box 7800, Jefferson City, Missouri 65102, For the Office of the Public Counsel and the Public. William M. Shansey, Assistant General Counsel, P. O. Box 360, Jefferson City, Missouri 65102, For the Staff of the Missouri Public Service Commission.

before Bensavage, hearing examiner.

BY THE COMMISSION:

REPORT AND ORDER

Procedural History

Exhibit No. 24
Case No(s) GL-2001-388
Date 3-11-03 Rptr XF

*1 On October 15, 1993, Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company (Tartan) filed an application pursuant to Section 393.170, RSMo 1986 and

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4 CSR 240-2.060 for a certificate of convenience and necessity authorizing it to construct, install, own, operate, control, manage, and maintain gas facilities, and to render gas service in and to residents of certain areas of Wright, Texas, Howell, Webster, Greene, and Douglas Counties, including the incorporated municipalities of Seymour, Cabool, Houston, Licking, Mountain Grove, Mountain View, West Plains, Ava, Mansfield, Marshfield, and Willow Springs, Missouri. The application included a number of exhibits designed to comply with 4 CSR 240-2.060, and indicated that other exhibits would be late-filed when they became available. On January 4, 1994, the Commission issued an Order and Notice, giving notice of Tartan's application and setting an intervention deadline of February 3, 1994. On January 20, 1994, Tartan filed a request for variance pursuant to 4 CSR 240-14.010(2), seeking a variance from the provisions of 4 CSR 240-14.020(1)(E), (F), and (H) in order to offer to customers a conversion incentive program for a period of 24 months during the construction of the distribution system.

Six entities or groups of entities filed timely requests for intervention. After the intervention deadline, the various petitioners for intervention and Tartan filed a number of suggestions in support, suggestions in opposition, and responses with respect to the requests for intervention. Some of these responses also dealt with Tartan's variance request. On March 23, 1994, Williams Natural Gas Company (Williams) also filed an application to intervene. On March 29, 1994, the Commission issued an order in which it granted intervention to the following entities: (1) Conoco Inc. (Conoco); (2) Missouri Gas Energy (MoGE); (3) West Plains Propane, Inc., Brotherton Propane, and PB's Propane (Propane Dealers Group One); (4) Missouri Gas Company (MoGas); (5) Empiregas Inc. of Ava, Empiregas Inc. of Birch Tree, Empiregas Inc. of Houston, Empiregas Inc. of Mountain Grove, Empiregas Inc. of Springfield, Empiregas Inc. of West Plains, Red Top Gas, Inc., Tri-County Gas Company, Ozark Gas & Appliance Co., RPA, Inc., Garrett's Propane Gas Service, Glen's Propane Gas Service, Inc., Tuttle Utility Gas Inc., Brooks Gas Company, Rees Oil Company, Smith Gas Company, Synergy Gas Corporation of Republic, Synergy Gas Corporation of Mountain Grove, Synergy Gas Corporation of Ava, Synergy Gas Corporation of Gainesville, Synergy Gas Corporation of Seymour, and Synergy Gas Corporation of Farmingdale, NY (Propane Dealers Group Two); and (6) Arkla Energy Resources Company (Arkla). (Propane Dealers Group One, Propane Dealers Group Two, and Conoco are hereafter referred to collectively as Propane Dealers.) The order also denied the application of Williams for intervention as untimely, and took Tartan's variance request with the case.

*2 On April 22, 1994, Tartan filed a motion for issuance of a protective order and establishment of a procedural schedule, which elicited a number of responses from the various parties.⁽⁷⁾ On May 24, 1994, the Commission issued an Order Granting Protective Order And Setting Procedural Schedule, which scheduled a hearing for August 1-4, 1994, and shortened the time for responses to discovery requests to seven days. On June 15, 1994, City Utilities of Springfield, Missouri (City Utilities) filed a motion to intervene, to which Tartan filed a response on June 21, 1994. The Commission issued an order denying intervention on July 6, 1994, indicating that City Utilities' application was well beyond the

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intervention period, with insufficient justification given for the untimeliness of the application.

On July 1, 1994, Tartan filed a First Amended Application which indicated that Tartan had received franchises ratified by the voters in nine communities, that it had received a franchise from the City of Mountain View which had not yet been ratified by the voters, and that it had not received franchises from the municipalities of Seymour, Fordland, Diggins, Norwood, or Rogersville, therefore it was not requesting that these latter municipalities be considered in this proceeding. The amended application also indicated that Tartan now proposed that natural gas would be provided to its distribution system through a city gate delivery point from a new interconnection pipeline to be owned and operated by Williams Natural Gas Pipeline located near Springfield, Missouri. In addition, the amended application attached and incorporated by reference revised Exhibit 3, a metes and bounds description of the proposed service area excluding the municipalities which failed to give Tartan a franchise; Exhibit 8, specimen tariffs; and Exhibits 9 and 10, Supplements 1 and 2 to Tartan's Feasibility Study which were attached to its original application as Exhibit 4.

On July 11, 1994, Tartan filed an objection to the use of the affidavit of Al Lindsey attached to the rebuttal testimony of Peter W. Frost, Conoco's witness, and on July 19, 1994, the Propane Dealers filed a motion for suspension of the procedural schedule. On July 22, 1994, a Stipulation and Agreement (Stipulation) was filed, signed by Tartan, the Staff of the Missouri Public Service Commission (Staff), and the Office of the Public Counsel (Public Counsel). On July 29, 1994, the Propane Dealers filed a request for hearing.

On August 1, 1994, prior to the commencement of the hearing, the parties orally argued the pending motions, and the Commission overruled Tartan's objection to the use of the affidavit of Al Lindsey, and denied the request for suspension of the procedural schedule, instead granting a continuance until August 3, 1994. The Commission also ruled on a number of oral motions raised at this time, granting a request to allow oral supplemental testimony regarding the Stipulation, and granting a request that a briefing schedule be set in lieu of the oral argument previously arranged, as briefs might better assist the Commission given the addition of new oral testimony. On August 3, 1994, a hearing was commenced on all matters respecting Tartan's application, and concluded on August 5, 1994.

Findings of Fact

*3 The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

Tartan Energy Company, L.C., is a limited liability company duly organized and existing under the laws of the State of Oklahoma, with its principal place of business located 8801 South Yale, Suite 385, Tulsa, Oklahoma 74137. Tartan was issued a Certificate of Limited Liability Company by the State of Oklahoma on March 3, 1993. Tartan has not, however, filed with the Commission a certificate from the Missouri Secretary of State stating that it is authorized to do business

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in Missouri. Registrations of Fictitious Name filed with the Missouri Secretary of State were submitted to the Commission as a late-filed supplement to Exhibit 1, which was attached to Tartan's application, on behalf of Tartan Energy Company, L.C., and Southern Missouri Gas Company. The owners of Tartan are listed on the Registration of Fictitious Name as Torch Energy Marketing, Inc. of Houston, Texas, and Tom M. Taylor of Tulsa, Oklahoma. At the hearing Mr. Taylor testified that 85 percent of Tartan is owned by Torch Energy Advisors, Inc., which is a subsidiary of Torchmark Corporation, and 15 percent is owned by the management of Tartan, specifically Mr. Taylor, Mr. Trusty, and Mr. Boyles. It is unclear whether Torch Energy Marketing, Inc. and Torch Energy Advisors, Inc. are the same or different corporations, or whether, if different corporations, Torch Energy Marketing, Inc. is also a subsidiary of Torchmark. The Registration of Fictitious Name for Southern Missouri Gas Company lists Tartan Energy Company, L.C. as the 100 percent owner. Testimony at the hearing indicated that Southern Missouri Gas Company was established as the name under which Tartan would do business in the State of Missouri.

Although there is a dearth of statutory guidance, the Commission has articulated requirements for certificates in Commission Rule 4 CSR 240- 2.060(2), and the criteria to be used in evaluating such applications in *Re Intercon Gas, Inc.*, 30 Mo P.S.C. (N.S.) 554, 561 (1991). The *Intercon* case combined the standards used in several similar certificate cases, and set forth the following criteria: (1) there must be a need for the service; (2) the applicant must be qualified to provide the proposed service; (3) the applicant must have the financial ability to provide the service; (4) the applicant's proposal must be economically feasible; and (5) the service must promote the public interest. *Id.*

The Propane Dealers filed a 14-page Request For Hearing as nonsignatory parties to the Stipulation. This 14-page document lists 10 issues raised by the prefiled testimony and discovery, and 15 issues, with sub-parts, raised by the Stipulation. However, regardless of whether the Commission is evaluating Tartan's original proposal or the proposal put forth in the Stipulation, the standard designated in *Intercon* remains the same, and is the basis for the issues which the Commission must address in this case. In essence the 'issues' raised in the Request For Hearing are really arguments, and as such these 'issues' need not be individually addressed.

*4 The Commission has reviewed and considered all of the evidence and argument presented by the various parties in this case. Due to the extreme time constraints in this matter and the volume of evidence submitted, some evidence and positions on certain matters may not be addressed by the Commission. The failure of the Commission to mention a piece of evidence or the positions of a party indicates that, while the evidence or position was considered, it was not found to be relevant or necessary to the resolution of the issue involved.

Tartan in its original application proposed to render natural gas transportation and distribution services in the incorporated municipalities of Cabool, Houston, Licking, Mountain Grove, Mountain View, West Plains, Ava, Mansfield, Marshfield, Seymour, and Willow Springs, Missouri, and their environs in Wright, Texas, Howell, Webster, Greene, and Douglas Counties, Missouri [FN1]. It also indicated

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that it was seeking franchises from additional communities, but these additional franchises never materialized. Tartan's amended application dropped the request to serve Seymour, as it had not received a franchise from that community, and also indicated that although it had received a franchise from the city of Mountain View, no voter ratification election for the franchise had yet taken place. The area sought to be certificated is east of the city of Springfield along Highways 60 and 63, extending to and including the above-mentioned municipalities, and also extending south of Highway 60 along Highway 5 to include the city of Ava, and north of Highway 60 along Highway A to include the city of Marshfield.

As proposed in Tartan's amended application, natural gas would be provided to Tartan's distribution system through a city gate delivery point from a new interconnection pipeline to be owned and operated by Williams located near Springfield. This interconnection would connect Tartan's 174.4 mile trunkline with the existing 16-inch lateral pipeline of Williams. It is estimated that the entire project will cost approximately \$39 million during its first three years, assuming ratification of all franchises specified in Tartan's application. Tartan also referenced a feasibility study in its application, which was late-filed and marked as its Exhibit 4 and made a part of its application. The feasibility study includes a project description, engineering cost estimates, estimates of system demand, plans for financing, revenues and expenses during the first three years of operation, and proposed rates and charges. Subsequently two supplements to the feasibility study were filed. Supplement No. 1 contains a sensitivity analysis of the total project demand for natural gas, and Supplement No. 2 contains miscellaneous updates and additional information.

Various Staff members submitted prefiled rebuttal testimony in which they took issue to some degree or other with various aspects of Tartan's plan. Staff's ultimate initial recommendation was conveyed through the rebuttal testimony of Craig A. Jones. Mr. Jones recommended that the project not be approved, but also listed conditions which should be met before a certificate was granted, in the event that the Commission decided to grant a certificate. However, it is Staff's position that the bulk of Mr. Jones' concerns, as well as the concerns of the other Staff members involved in this proceeding, were ameliorated by the provisions of the Stipulation. The Stipulation essentially provides the Commission with an alternate proposal for its consideration and decision. Since the Stipulation in essence represents a new or revised proposal by Tartan, and since the bulk of the cross-examination conducted at the hearing related to the provisions of the Stipulation, it is appropriate at this juncture to summarize some of the major provisions of the Stipulation. In restating portions of the Stipulation, the Commission is not intending to include all the nuances and details contained therein. A copy of this Stipulation is attached hereto and incorporated herein by reference as Attachment 1, and the reader is referred to this attachment for the specifics agreed to in the Stipulation.

*5 The Stipulation signed by Tartan, Staff, and Public Counsel contains the following major provisions:

-- that a certificate of convenience and necessity be granted conditioned on

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the approval of tariffs prior to the commencement of construction, with a certificate to become effective on the same effective date as the tariffs; -- that issuance of the certificate be conditioned upon the presentation to the Commission's Procurement Analysis Department of a signed firm transportation contract with Williams covering the production zone for 5,000 Mcfs per day, increasing to 10,000 Mcfs per day within three years, and the market zone for 10,000 Mcfs per day prior to the approval of tariffs; -- that Tartan adopt depreciation rates consistent with those recommended by Staff witness Guy C. Gilbert; -- that Tartan meet the conditions proposed by Staff witness Hans Shieh with respect to gas safety. (This provision also notes that the Stipulation does not anticipate the construction of a propane peak shaving plant, but that in the event a decision is made to construct such a plant, the plans for the plant will be submitted to the Commission prior to construction); -- that Tartan provide only retail natural gas service to the ten municipalities from which it has received franchises, with the certificate of convenience and necessity to serve Mountain View contingent upon voter ratification of the franchise; -- That Tartan is required to file a rate case on or before the two-year anniversary of the commencement of service in West Plains. A normalized volume level of at least 1,797,000 Mcfs shall be imputed for purposes of determining revenues associated therewith in the second year anniversary rate case, all subsequent rate cases, and actual cost adjustment (ACA) cases for determining appropriate rates. In the event the normalized test year volume level for the service area is less than 1,797,000 Mcfs per year, Tartan may not defer any costs associated therewith to a future rate proceeding, but in the event the normalized test year volume level for the service area exceeds 1,797,000 Mcfs per year, this actual volume level shall be utilized for establishing rates instead. The provisions of this paragraph are deemed to apply to any of Tartan's successors or assigns; -- that Tartan consents to achieve a capital structure reflecting a 40-42 percent common equity to total capital ratio; that Tartan obtain a resolution from the board of directors of Torch Energy Advisors, Inc. committing Torch to issue a minimum of \$15 million in equity or more if needed to supply sufficient equity for Tartan to achieve the 40-42 percent ratio; that Tartan must attain the 40-42 percent ratio within two years of the issuance of the certificate of convenience and necessity; and that Tartan may not implement a general or limited increase in nongas rates until it has achieved the 40-42 percent ratio. In addition, Tartan may not issue long-term debt financing until such time as it has a minimum equity range in its capital structure of \$8 to \$10 million, and that it will not seek Commission approval for more than \$24 million in total debt financing within two years of the effective date of the Report and Order in this proceeding; -- that Tartan's variance request be granted, but that one-half of the conversion costs associated therewith be booked below-the-line for ratemaking purposes, with the remaining one-half of the conversion costs associated with the provision of piping or equipment on the customer's side of the meter treated as a start-up cost and included in rate base for ratemaking purposes; -- that the following rates shall be used for Tartan's nongas costs:

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Residential and General Service	
Customer Charge -- Residential	\$ 10.00 per month
Customer Charge -- General Service	\$ 15.00 per month
For all Ccfs used per month	\$ 0.307 per Ccf
Firm Large Volume and Firm Transportation Service	
Customer Charge	\$300.00 per month
Maximum Commodity Charge	\$ 0.293 per Ccf
Minimum Commodity Charge	\$ 0.01 per Ccf

*6 -- that Tartan be required to maintain certain types of information; and -- that Tartan establish a gas supply department within one year of the effective date of the Report and Order in this proceeding.

(1) Need For Service

Testimony was presented that there are no regulated gas suppliers in the area proposed to be certificated. Fuel sources are propane, wood, fuel oil, and electricity. Propane is the fuel source most similar to natural gas, and is unregulated by the Commission.

Nine communities have granted franchises which the voters therein have ratified, and voter ratification of a franchise in Mountain View is still pending. The franchises provide some evidence of need and are entitled to great weight in that regard. The fact that these ten communities were willing to go through the process of issuing a franchise and holding an election so that the voters would have an opportunity to pass on the issue demonstrates a serious desire for and interest in natural gas. Who would be in a better position to assess the need for natural gas than the very communities seeking it?

In addition, there was this testimony by Tartan's witness Tom Taylor on the issue of need: 'From the aspect of the Tartan perception of this Stipulation, we were interested in providing first-time natural gas service to a part of the state that is currently underserved. We were approached by seven of these communities initially, on their initiative, not our initiative, to develop a gas system to meet their needs, providing their citizens a choice of natural gas. So we are in the framework of trying to provide a service that is needed.' Tr. at 77. It is unclear whether the 'we' refers to Tartan or its cadre of witnesses, Mr. Taylor, Mr. Trusty, and Mr. Keith, who are not unknown in the State of Missouri, but in any event the fact that so many communities would take the initiative to seek out proposals for a natural gas system is strong evidence of need.

The Missouri Court of Appeals has held that '[t]he term 'necessity' does not mean 'essential' or 'absolutely indispensable', but that an additional service would be an improvement justifying its cost.' State ex rel. Intercon Gas v. P.S.C., 848 S.W.2d 593, 597 (Mo. App. W.D. 1993). Testimony was adduced indicating that natural gas is one of the preferred forms of energy in the central United States where it is readily available. The availability of natural gas provides a new energy alternative which may lower energy costs and promote

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economic development. Natural gas may also provide an inviting alternative for industrial and commercial customers. In addition, the project itself will represent a major capital investment in south central Missouri, which will require the employment of workers during the construction phase of the project, and for the operation of the pipeline.

The Commission also notes that as a general policy in recent years, it has looked favorably upon applications designed to spread the availability of natural gas throughout the State of Missouri wherever feasible. The Commission's most recent pronouncement respecting the spread of natural gas may be found in its decision in *Re the application of UtiliCorp United, Inc. d/b/a Missouri Public Service*, Case No. GA-94-325 (Report and Order issued August 22, 1994). The Commission finds that the facts related above provide sufficient indicia of the need for natural gas service in the proposed service area.

Applicant's Qualifications

*7 Little or no evidence was presented refuting the qualifications of Tartan to provide the proposed service. No serious challenge was made to the accuracy of Tartan's analysis of the overall cost of the project, nor to the engineering design and technical requirements of the project.

Tartan is owned by Torch Energy Advisors, Inc. and Mr. Taylor, Mr. Trusty and Mr. Boyles. Mr. Taylor is an engineer with a degree in industrial engineering who has received continuing professional education over the years in all aspects of the natural gas and the petroleum businesses, including natural gas transportation. For 17 years he worked for Sun Pipe Line Company (Sun) in various engineering, operating, and administrative positions. He later joined ESCO Energy, Inc. where his primary responsibility was starting a subsidiary, Omega Pipeline Company (Omega). Omega is in the business of gathering and transporting natural gas, and was the owner and operator from inception of Missouri Pipeline Company and MoGas. Mr. Taylor served as president of Omega, and also as president of Missouri Pipeline Company, which was the first intrastate pipeline ever certified by the Public Service Commission. Currently Mr. Taylor is president of Tartan.

Mr. Trusty holds both a bachelor's and master's degree in mechanical engineering, and is a Registered Professional Engineer in the State of Oklahoma. Mr. Trusty was employed by Sun for seven years during which he was involved in pipeline engineering, operations, and maintenance. His final position with Sun was as manager of corporate planning. Subsequently he joined Omega at its inception and served as vice president of engineering and operations. Currently he is the vice president of engineering and operations for Tartan. Mr. Keith, who testified as one of Tartan's witnesses, is currently employed as a utility consultant. He has a bachelor of business administration degree with a major in accounting, and over the years has held a number of positions relating to utilities and utility regulation, including a position with the staff of the Kansas Corporation Commission.

None of these gentlemen are unknown to the Missouri Public Service Commission.

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Mr. Taylor and Mr. Trusty were intimately involved in the proposals which led to the organization and development of Missouri Pipeline Company and MoGas. Both of these projects have been successfully completed and provide services within the State of Missouri. Thus, Tartan's managers have some familiarity with the environment in the State of Missouri, including the regulatory environment.

Counsel for Conoco raises the specter that Mr. Taylor and Mr. Trusty may leave Tartan at some point after a certificate is granted. While it is true that Mr. Taylor and Mr. Trusty may leave Tartan, just as the vast majority of people in this country are free to change positions or jobs, Tartan's qualifications do not rest solely on the shoulders of these gentlemen. Tartan is also owned by Torch Energy Advisors Inc., which is involved in the acquisition and management of oil and gas properties, including oil and gas production and development, energy property acquisitions including various pipelines, oil and gas marketing, and well operations. Torch Energy Advisors, Inc. also recently purchased Panda Resources (Panda), which is a gas marketing company. Although Tartan is undecided about whether it intends to use Panda, it at least has knowledge of the existence of gas marketing companies and would likely have access to Panda if needed. In addition, Torch Energy Advisors, Inc. is a wholly-owned subsidiary of the Torchmark Corporation of Birmingham, Alabama, and handles Torchmark's energy investments.

*8 The Missouri Court of Appeals provides some guidance on this issue: 'The safety and adequacy of facilities are proper criteria in evaluating necessity and convenience as are the relative experience and reliability of competing suppliers.' State ex rel. Intercon Gas v. PSC, 848 S.W.2d 593, 597 (Mo. App. W.D. 1993). As previously stated, no one has significantly challenged the safety or adequacy of Tartan's proposed facilities, and the owners and managers of Tartan are experienced in the natural gas industry. The Commission is confident that Tartan possesses the necessary knowledge of the natural gas utility industry including the industry as it has developed in the State of Missouri, as well as of all the requisite technical requirements regarding engineering, safety, and so forth, and so finds. Thus, Tartan has shown that it is qualified to provide the proposed service.

(3) Applicant's Financial Ability

The evidence indicates that Tartan is owned by Torch Energy Advisors, Inc., a company which is in the business of energy investment, and which currently has \$350 million invested in energy-related assets. In turn, Torch Energy Advisors, Inc. is a wholly-owned subsidiary of the Torchmark Corporation, which is an insurance and diversified financial services holding company with assets of \$6 billion.

As of March, 1994, Tartan has expended approximately \$625,000 on this project, representing costs associated with the initial investigation and research, preliminary engineering costs, and the expenses of interacting with local community leaders on various aspects of the project, as well as expenses related to the filing of its application for a certificate. This developmental effort was

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capitalized by Torch Energy Advisors, Inc. on a monthly basis with 45 days of working capital in the amount of approximately \$75,000. Staff witness Jay Moore testified that it was acceptable to inject equity on a month- to-month basis in the form of working capital. Both Tartan witness Tom Taylor and Staff witness Jay Moore testified that their understanding of one of the conditions imposed on the issuance of a certificate under the Stipulation is an up-front equity funding of Tartan in the amount of \$8 to \$10 million, with a commitment of \$15 million in equity. Tartan has indicated that it would like to obtain debt financing as soon as possible so it can take advantage of current low interest rates; as lenders will not lend \$24 million without a strong equity commitment, including at least a resolution from the board of directors of Torch Energy Advisors, Inc., Tartan has an incentive to seek out the equity commitment it needs.

The Propane Dealers attempt to attack the capital structure proposed under this Stipulation by comparing it with the capital structure authorized in a prior case involving MoGas and Missouri Pipeline Company. However, several witnesses testified that the difference in capital structure was attributable to the different atmosphere in the banking and insurance industries at that point in time. Although there is no guarantee that Tartan can obtain debt financing, this is true for any utility going forward.

*9 It is clear that with Torch Energy Advisors, Inc. backing Tartan, Tartan has the financial ability to provide the proposed service; it is equally clear that Tartan has no independent means to go forward with the project. The Commission so finds. The Commission also determines that under these circumstances a certificate of convenience and necessity should not be issued to Tartan unless adequate protections are built into the Report and Order to ensure that Tartan has access to the financial resources it requires. Any certificate issued will be issued to Tartan, not Torch Energy Advisors, Inc., therefore the Commission wishes to assure itself that Tartan will have the capacity to build the proposed project.

(4) Economic Feasibility of Proposal

The Propane Dealers raised numerous points in their request for hearing, at the hearing, and in their briefs, regarding the feasibility of both Tartan's original proposal and the proposal as modified by the Stipulation. The Commission will attempt to review only those points which it deems have the most potential for merit or, if the positions of the Propane Dealers are accepted, have the greatest impact on the issue of feasibility.

One of the most important issues pertaining to the economic feasibility of Tartan's proposal is the conversion rate which Tartan is expected to reach by the end of the third year of the project. In his prefiled rebuttal testimony, Staff witness Craig Jones testified that a conversion rate of about 45 percent was more realistic than Tartan's proposed conversion rate of approximately 70 percent. Staff based its initial calculations of rates on this 45 percent conversion assumption, and came up with a cost for natural gas that was equivalent to a propane cost of 83 cents per gallon. Staff also stated that although propane

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prices may peak in the winter at a price in excess of 83 cents per gallon, the overall price for propane would generally be less than that. Given the 83 cent figure, Mr. Jones concluded that Staff's calculations produced rates very close to or in excess of propane prices, and therefore the project would not be feasible based on those numbers.

However, as part of the Stipulation Tartan agreed to the imputation of a volume level of at least 1,797,000 Mcfs in future rate cases. According to Staff witness David Winter, the 1,797,000 Mcf volume figure results in a conversion rate of just over 70 percent, about what Tartan originally proposed. Using the imputed volume level, Staff calculated an equivalent propane price of approximately 73 cents. This new figure of 73 cents is below the original calculation of 83 cents, which Staff felt to be too close to the price of propane.

On the question of propane prices and what price represents the average price at which natural gas would be expected to compete, the various parties offered different estimates of the cost of propane. The Propane Dealers estimated the average cost of propane to be 68 cents, Staff estimated 68 to 75 cents, and Tartan estimated 69-1/2 to 89-1/2 cents. Although arguments were raised about how the various figures were obtained and what the various numbers truly represented, the Commission finds that the numbers offered by the parties are essentially consistent with each other.

*10 Testimony was also presented with respect to conversion rates in other portions of Missouri. These figures ranged from relatively low conversion rates such as those experienced in the Franklin County area, around 41 percent, to very high conversion rates experienced in Cuba and St. James, 83.9 percent and 94.6 percent respectively. However, no effort was made to compare the communities in Tartan's general service area with the communities experiencing the varied conversion rates in other parts of the state, in terms of similarities and dissimilarities. The evidence indicates that in the past conversion rates have varied quite dramatically from location to location within the State of Missouri. In the Commission's most recent certificate case involving natural gas, however, the Commission accepted as reasonable the company's estimate of a 70 to 90 percent conversion rate. Re the matter of the application of UtiliCorp United, Inc. d/b/a Missouri Public Service, Case No. GA-94-325 (Report and Order issued August 22, 1994) at 5-6. The Commission also deems it appropriate to focus on the effect of the volume imputation level. In the same rebuttal testimony in which Mr. Jones recommended disapproval of Tartan's proposal, he also stated a number of conditions which should be included in any order granting a certificate to Tartan. Mr. Jones testified as follows:

First, SMGC [Tartan] should bear all risk associated with recovering the cost resulting from this project. If approved, rates would be established for the provision of service in the proposed area. If the rates are somehow made to be competitive with propane and enough customers convert to natural gas, the company would theoretically, with time, recover its investment. However, if the number of customers is insufficient to generate enough sales to recover the costs, the unrecovered cost should be the responsibility of SMGC's stockholders, not its customers. These unrecovered revenues should not be recovered through rate

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increases in a subsequent rate case. Language assigning a minimum sales volume and maximum rate base and cost figures should be included in any order approving the certificate. Staff's proposed figures are reflected in Schedule 1 of Staff witness David Winter's rebuttal testimony. These figures will have to be maintained in future rate cases to prevent the risk of the project from being shifted to the ratepayers in subsequent rate cases. In my opinion this is the only way to prevent the risk of this project from being included in rates that customers pay in future years (i.e., rate base and depreciation). If SMGC is confident of its numbers used in this Application, they should have no objection to protective language, designed to minimize the risk to the company's customers, being placed in any order that might grant a certificate.

Exh. #25 at 24-25. The Staff's position in supporting the Stipulation, therefore, is consistent with its position as originally filed.

*11 At the hearing Mr. Jones admitted that the Stipulation does not contain a maximum rate base and cost figures, but testified that the imputation of volume levels minimized the risk to customers. The Commission finds the testimony of Mr. Jones to be persuasive, and that the Stipulation provisions relating to the imputation of the 1,797,000 Mcf volume level adequately shift the risk to Tartan and its shareholders, and provide reasonable protection to customers against the possibility that Tartan has overestimated the conversion rates reasonably attainable.

As part of the Stipulation, Tartan agreed to provide only retail service to the 10 municipalities which Tartan seeks to serve under the requested certificate of convenience and necessity. Copies of the franchises for these municipalities were filed as part of Tartan's application. Several of the franchises contain provisions which would allow the municipalities to either purchase the distribution system built by Tartan within a five year period from the date of first delivery of natural gas, or rescind the franchise within 120 calendar days after Tartan's receipt of its certificate of convenience and necessity in order to proceed with the immediate construction of its own distribution system, or both. In the event a municipality decided to rescind the franchise in order to build its own distribution system, the municipality is required to have its engineering design, cost estimate, contractor selection, and funding in place prior to the rescission. Three municipalities expressed an interest in building their own distribution system, Mountain View, Ava, and Houston, but only Mountain View and Ava had taken the step of passing bond elections in anticipation of constructing municipally-owned systems in their communities. The Propane Dealers argue that in light of the Stipulation, in which they claim Tartan has effectively bargained away some of the options which were available to the municipalities under the franchises, the franchises are no longer valid, and thus Tartan can no longer meet one of the prerequisites for the issuance of a certificate of convenience and necessity.

As a preliminary matter the Commission notes that under the applicable statute, Section 393.170.2, RSMo 1986, and the applicable rule, 4 CSR 240-2.060(2)(A)10 A, Tartan was at a minimum only required to file a verified statement or affidavit stating that it had received the required consent of the proper municipal

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authorities. The fact that it was unnecessary to file actual copies of the franchises is consistent with Staff's argument in its reply brief that the Commission has no authority to adjudicate the validity of a franchise. State ex rel. Electric Company of Missouri vs. Atkinson, cited by Staff, states as follows:

If the parties to that franchise are satisfied with what is left of it after striking out that provision, there is no reason why the appellant should be heard to complain. It is generally conceded that the Public Service Commission is not a court. To say the least, it is not its primary business to determine legal questions, and especially it should not undertake to determine a legal question in which the party raising is not concerned. The statute empowers the Public Service Commission to issue a certificate of convenience and necessity, or to refuse it, but does not empower it to adjudicate the question of the validity of the franchise.

*12 State ex rel. Electric Company of Missouri vs. Atkinson, 275 Mo. 325, 204 S.W. 897, 898 (banc 1918). This case is also consistent with the understanding of counsel for Propane Dealers Group One, who stated on the record, '[S]ince the issue on franchises is basically a legal issue, I have no further questions of Mr. Jones on that issue at this time' Tr. at p. 489.

In addition to the foregoing, the Commission also notes that the evidence indicated the municipalities were aware of Tartan's need for approval of the Public Service Commission. Moreover, the franchises also contain numerous other conditions, such as the requirement that Tartan furnish reasonable assurance to the municipalities of the availability of a natural gas supply at competitive prices prior to commencing physical construction of the distribution system. Finally, the Commission is not convinced that Tartan has effectively bargained away the rights of the municipalities under the franchises, as Staff witness Craig Jones testified that one solution to the problem of Tartan serving municipalities in other than a retail capacity would be for Tartan to establish a second company to operate separately as an intrastate pipeline, which could then offer transport service to communities owning their own distribution systems. Exh. #25 at 18-19.

The Propane Dealers expend a fair amount of energy arguing that the gas rates and nongas rates utilized by Staff and Tartan in conjunction with the Stipulation are substantially underestimated, and thus can lead to the trapping of customers when the true costs are reflected in subsequent rate cases. While it is possible that the Propane Dealers are correct and these costs have been underestimated, the Commission is of the opinion that the rates established by Tartan and Staff are objectively reasonable, and that the Stipulation as a whole adequately protects customers from bearing the cost of such an underestimation. The gas rate in particular may instead be overestimated, as it includes the cost of propane for a propane plant that is no longer a part of Tartan's proposal. With respect to the nongas costs, the Commission emphasizes that these costs cannot be known with any certainty prior to the development of the system.

Another matter which the Propane Dealers claim leads to the underestimation of the true cost of natural gas service is the propane air plant, referenced above,

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which was included in Tartan's original proposal. While the record is not clear as to why the peak shaving propane air plant was included in Tartan's original plans, testimony was adduced at the hearing which indicated that there would be no need for peaking capacity until at least two years, and that a determination could be made at that time with respect to which peaking solution would be cheaper -- contracting for additional firm transportation, or building a propane air plant. Given that the Propane Dealers' main argument has been that Tartan will not be able to obtain enough conversions or reach the stipulated volume level, it is unclear why they are so concerned that peaking capacity be available at the outset. The Commission deems the decision to defer action on peaking capacity until a period of time closer to the actual need therefor to be a reasonable one. The Propane Dealers also expressed concern about the circumstances surrounding Tartan's arrangements for firm transportation capacity. Tartan indicated that it had made a bid to Williams for firm transportation service on April 29, 1994, and that it had entered into an agreement with Williams on July 29, 1994. The concern of the Propane Dealers on this issue has merit. The evidence presented is very sketchy with respect to the details of Tartan's arrangements with Williams. The broad outlines of Tartan's plan are contained in numbered paragraph 3 of the Stipulation. Because the Stipulation anticipates that Staff will be provided a signed firm transportation contract with Williams prior to the approval of Tartan's tariffs, the Commission is of the opinion that incorporating such a condition as part of this Report and Order will adequately address the concerns raised on this issue.

*13 The Propane Dealers also attached to their initial briefs an extra- record Notice of Complaint by the Federal Energy Regulatory Commission (FERC) advising of a complaint filed on August 11, 1994, by City Utilities against Williams with respect to a bid made by Tartan to Williams on April 29, 1994 for firm transportation service. The Commission is not convinced that it is appropriate to consider a document which is outside of the record, even though it is aware that there was no dilatoriness on the part of the Propane Dealers in bringing the matter to the Commission's attention, as the Notice was issued after the conclusion of the hearing in this case. Nevertheless, at some point the record must close and a decision made based on the evidence presented, which will always be reflective of the situation at a given point in time.

In spite of its reservations, the Commission has reviewed this point, and is of the opinion that it is unnecessary to delay its decision until after the resolution of the FERC complaint. As both Tartan and Williams will of necessity be aware of the complaint filed by City Utilities, each may act according to its perception of its best interest. The existence of the FERC complaint does not fundamentally alter the merits of Tartan's proposed project. Shortly after Tartan's April 29th bid to Williams, for example, Tartan submitted prefiled testimony in which it considered the possibility that City Utilities might match its bid, as City Utilities was entitled to do. In that event, Tartan 'would secure the necessary firm transportation service to serve the proposed service area by entering into a 15-year agreement with WNG [Williams] in which WNG would agree to expand the capacity of its 16' pipeline serving the Springfield area,

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and SMGC [Tartan, d/b/a Southern Missouri Gas Company] would build the 8-mile lateral pipeline from the end of WNG's Springfield 16 ' pipeline to SMGC's trunk pipeline in eastern Greene County.' Exh. #3 at 5. The effect of such a contingency occurring would delay the completion of the project by one construction season. Id. at 6. While a successful prosecution of the complaint may affect Tartan's current plans for the project, the Commission determines based on the above that the mere existence of the FERC complaint does not render the project infeasible. This evidence also demonstrates why it is unfair to view the FERC complaint in isolation: the other parties have not had an opportunity to present evidence regarding the impact of the complaint on the project, including alternate sources of firm transportation.

The Commission has considered the above points and the evidence presented, and is of the opinion that there is sufficient evidence from which to find that Tartan's proposal, as modified by the Stipulation, represents a viable project. Both Staff witness Craig Jones and Public Counsel witness Ryan Kind were present for much of the cross-examination by the Propane Dealers with respect to the points described above. When asked if they had changed their minds about the Stipulation, neither recanted or repudiated the Stipulation. As was similarly noted by the Commission in *Re UtiliCorp United, Inc., d/b/a Missouri Public Service*, Case No. GA-94-325 (Report and Order issued August 22, 1994) at 6, in this case Tartan bears most of the risk if it has underestimated the economic feasibility of its project, and the public benefit outweighs the potential for underestimating these costs.

(5) Promotion of the Public Interest

*14 The requirement that an applicant's proposal promote the public interest is in essence a conclusory finding as there is no specific definition of what constitutes the public interest. Generally speaking, positive findings with respect to the other four standards will in most instances support a finding that an application for a certificate of convenience and necessity will promote the public interest. From a review of the evidence as a whole, the Commission has received the distinct impression that Tartan's original application was prematurely filed. For example, many of the required elements were filed on a hasty basis. The Propane Dealers expressed concern prior to the beginning of the hearing that the Commission's actions in this case might encourage future applicants to view the initial application process as a 'trial balloon' with respect to their initial proposals. The Commission does not agree that Tartan's proposal changed quite as drastically as the Propane Dealers would suggest. Indeed, it may be inevitable that a certain amount of change and fine-tuning will occur as the review of an application proceeds; certainly the Commission has in the past seen applications which have changed much more drastically than the present one. However, the Propane Dealers have raised a valid point, and the Commission puts future applicants on notice that applications which change drastically or are filed without the required documents will not be looked upon favorably.

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In reviewing the myriad contentions of the Propane Dealers, it is quite apparent to the Commission that the Propane Dealers seek to require Tartan to prove that its application is virtually risk-free. This is an impossibility, as estimates will always remain just that -- estimates. It is difficult to truly calculate cost-based rates for a start-up company, since the actual costs are not and cannot be known with any certainty until the company is up and running. The question, therefore, becomes whether the estimates given are reasonable.

The Commission has considered the evidence presented to it, and determines that the overall proposal submitted by Tartan, as modified by the Stipulation, is reasonable. While the application process may have been imperfect, the Commission agrees with Tartan that there presently exists a 'window of opportunity' to bring natural gas to south central Missouri. The Commission is of the opinion that the biggest risk facing Tartan is that it may take more time than predicted to obtain the necessary conversions, not that the project is not viable at all. Tartan is aware of the risk and has chosen to accept it. It agreed to the imputed volume levels contained in the Stipulation and also agreed that the provision involving imputation of volume levels be binding on its successors and assigns. Tartan also conducted a sensitivity analysis which showed that in the event conversions took place at a lower rate than anticipated, Tartan's return on its investment would be reduced to a single-digit level. Tartan seems willing to accept this risk. In spite of any flaws in the application process, the Commission is of the opinion that Tartan is serious about bringing natural gas to south central Missouri, and has access to the wherewithal to do so.

*15 While the Propane Dealers have expressed both legitimate concerns and meritless arguments with respect to Tartan's project, the fact remains that the Propane Dealers will almost never have an incentive to sign a stipulation that recommends the granting of a certificate of convenience and necessity to any entity attempting to bring natural gas into areas where propane is a main energy source. Instead the primary and understandable interest of the Propane Dealers is in protecting their businesses from competition. This is apparent in the contradictory arguments made by the Propane Dealers: on the one hand, they argue that natural gas cannot compete with propane in the proposed service area; on the other hand, they also argue that the advent of natural gas will destroy their businesses, and that this is a factor the Commission should consider in reaching a determination of the public interest. The facileness of these arguments with respect to the interest of the Propane Dealers is easily shown. If in fact natural gas can compete with propane in the proposed service area, then the residents of south central Missouri will clearly benefit by having another energy source available, and perhaps by enjoying more competitive prices among all the available fuel sources. Propane will of necessity have a smaller share of the market than it currently enjoys, and to the extent that it is required to cut prices in order to remain competitive, its profit margin may be smaller. However, if in fact natural gas cannot compete with propane, the worst effect likely to be experienced by the Propane Dealers is again the possibility of a smaller profit margin to the extent the Propane Dealers cut costs to drive natural gas out the market.

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The extent to which the businesses of the Propane Dealers are adversely affected by the grant of a certificate to provide natural gas service to the proposed service area is not a determining factor in the Commission's decision as to whether it is appropriate to issue such a certificate. As was aptly stated by the Missouri Court of Appeals in a case in which liquified petroleum gas distributors appealed the award of a certificate of convenience and necessity to a natural gas distributor, 'We think the Commission properly rejected this contention. [That the certificate be conditioned upon the natural gas distributor relieving the liquified petroleum gas distributors of their financial loss.] LPG must give way to natural gas just as the mule breeding business vanished upon the advent of the farm tractor and truck; just as wood stoves gave way to LPG. Such casualties are the price paid for 'progress'. ' State ex rel. Webb Tri-State Gas Company vs. Public Service Commission, 452 S.W.2d 586, 588 (Mo. App. 1970). It is interesting to note that as far back as 1970, almost 25 years ago, the advent of natural gas was considered a mark of progress.

Natural gas is a preferred energy source for both economic and environmental reasons, and Missouri is fortunate to be geographically located near several natural gas producing states. The Commission deems it to be in the long-term public interest of south central Missouri and the entire State of Missouri to encourage the availability of natural gas.

*16 Nevertheless, the posture of Tartan's application is such that a certificate of convenience and necessity cannot be issued absent the imposition of some reasonable conditions. Since the necessary timing of the conditions varies, the Commission will issue a certificate of convenience and necessity to Tartan upon the following conditions:

1. that the certificate of convenience and necessity shall not be effective until Tartan's tariffs are approved;

Prior to the approval of Tartan's tariffs:

2. that prior to the approval of Tartan's tariffs, Tartan file with the Commission a certificate from the Missouri Secretary of State that it is authorized to do business in the State of Missouri; 3. that prior to the approval of Tartan's tariffs, Tartan file with the Commission an affidavit of its president indicating whether Tartan is owned by Torch Energy Advisors, Inc. or Torch Energy Marketing, Inc. If the latter, the affidavit shall indicate whether Tartan has precisely the same relationship with Torch Energy Marketing, Inc. that Tartan testified it had with Torch Energy Advisors, Inc. at the hearing, and whether Torch Energy Marketing, Inc. has precisely the same relationship with Torchmark Corporation that Tartan testified Torch Energy Advisors, Inc. had at the hearing, specifically: whether Torch Energy Marketing, Inc. -- has an 85 percent ownership interest in Tartan; -- has \$350 million invested in energy-related assets; -- has invested at least \$625,000 in Tartan; -- has supplied Tartan with 45 days of working capital on a monthly basis in the approximate amount of \$75,000; -- is a wholly-owned subsidiary of Torchmark. 4. that prior to the approval of Tartan's tariffs, Tartan submit to the Commission's Procurement Analysis Department a signed firm transportation contract with Williams Natural Gas Company as required in numbered paragraph 3 of the Stipulation;

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Prior to the commencement of construction of any gas facilities:

5. that prior to the commencement of construction of any gas facilities, Tartan file with the Commission a resolution of the Board of Directors of Torch Energy Advisors, Inc. or Torch Energy Marketing, Inc. -- whichever company is an actual owner of Tartan -- committing itself to issue a minimum of \$15 million of equity to Tartan, or more if needed to supply sufficient equity to enable Tartan to achieve a 40-42 percent common equity to total capital ratio, and committing to supply this equity to Tartan within two years of the issuance of the certificate of convenience and necessity contemplated by this Report and Order, so that Tartan may obtain the 40-42 percent ratio as contemplated in numbered paragraph 8 of the Stipulation; 6. that prior to the commencement of the construction of any gas facilities, Tartan file certified copies of the required approval of other governmental agencies, per Rule 4 CSR 240- 2.060(2)(A)10 B, eg., FERC approval of arrangements with Williams, Missouri Highway Department approval of the use of the highway right-of-way, etc.;

*17 Miscellaneous:

7. that the certificate as it applies to the City of Mountain View shall be contingent upon voter ratification of the franchise granted to Tartan. Tartan may not construct distribution facilities therein or serve residents therein until such time as Tartan has filed with the Commission an affidavit showing that the voters ratified the franchise in the voter ratification election; 8. Tartan may not construct distribution facilities to serve residents in the unincorporated portions of the Counties within its service territory unless it has first obtained any necessary county franchises authorizing it to do so, and has filed an affidavit to that effect with the Commission; 9. In addition, Tartan shall comply with all of the other conditions contained in the Stipulation, within the time frames contemplated by the Stipulation. 10. that upon receipt of the above-referenced documents, the Staff shall -- as soon as possible but in no event later than 30 days after receipt -- submit a brief report to the Commission, stating its recommendation as to whether the documents submitted show compliance with the conditions of this Report and Order. In the event Tartan is in compliance, the Commission shall issue an order authorizing construction after receipt of Staff's report to that effect.

The Commission determines that the conditions listed above are necessary and appropriate to protect the public interest. The conditions listed embrace the spirit of what was intended by the Stipulation, if not the actual language used, and merely require that the prerequisites demanded of all applicants under the applicable Commission rule be met. These conditions are particularly important given that Tartan is a new company with no known track record upon which the Commission may rely. Thus, the Commission finds that it is in the public interest to issue to Tartan a certificate of convenience and necessity subject to the conditions set forth above, and the conditions contained in the Stipulation.

Variance Request

In the request for variance from the Commission's promotional practice rules

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filed on January 20, 1994, Tartan proposed a conversion incentive program as follows:

-- Tartan would provide customers with the service line, meters, regulators, labor, and other equipment necessary for the customer to utilize natural gas service; -- would extend the service lines from the mains to the customers' meters and premises; -- would provide and install necessary orifices for existing appliances; -- would provide minor appliance upgrades or modifications; -- would provide testing and repair of gas piping from the meter to various gas appliances within the residence; -- Tartan would offer the above-listed conversion incentives up to an average of \$200, with any additional conversion or appliance upgrade costs provided to the customer to be paid by the customer, with payments spread over a period of 24 months with no interest; -- Tartan would make available to customers natural gas appliances at cost with payments spread over a 24-month period at Tartan's cost of money; and -- the conversion incentive program would be offered for a limited period of 24 months during the construction of Tartan's distribution system.

*18 As good cause for the variance, Tartan stated the following:

-- that the program would contribute to safety due to the limited number of qualified contractors available for conversion in the proposed service area; -- that the program would allow conversions to be done economically while contractors and construction crews, personnel, supervisors, and inspectors are already in the area constructing the backbone gas distribution system; -- that economic advantages will result from the ordering of large bulk quantities of various parts and materials; -- that the program will help low income and fixed income customers convert, who might otherwise not have the wherewithal to convert; -- that customers would gain access to natural gas more quickly, effectively, and efficiently; -- that the program would encourage a faster demand for natural gas, which would benefit customers who convert both in the near-term and long-term; and -- no regulated public utilities are in the proposed service area which would be directly affected by the program.

Originally Tartan sought to include 100 percent of the cost associated with its conversion incentive program in rate base for ratemaking purposes. Pursuant to the Stipulation entered into with Staff and Public Counsel, one-half of the costs would be booked below-the-line for ratemaking purposes, with the remaining one-half of the costs to be treated as a start-up cost and included in rate base for ratemaking purposes. The Propane Dealers conducted extensive cross-examination on this issue at the hearing. They stressed that conversions at no or low cost could 'trap' customers who could not easily reconvert once the alleged higher cost of gas service becomes apparent, that the program is discriminatory because it is temporary in nature, and that it is unfair to charge all ratepayers a portion of conversion costs through rate-basing. In addition, Tartan's witnesses were also questioned as to whether the conversion incentive program would extend to industrial customers.

The evidence indicated that the cost of the conversion incentive program would be approximately \$1.2 to \$1.3 million. The 24-month period for the program would not begin until gas was available in a given community, therefore the

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commencement date of the 24-month period would be staggered from community to community. Tartan would be required to keep track of the actual costs for the conversions, and could not impute the \$200 limit to a particular customer, nor offset costs from household to household in the event the conversion costs for a particular customer were less than or more than the \$200 limit. There was also testimony that the conversion incentive program would benefit all ratepayers by attracting as many customers as quickly as possible, which would speed the overall development of the system. In addition, Tartan's witness Michael N. Trusty specifically stated, 'I had not envisioned it [the conversion incentive program] extending to industrial customers.' Tr. at p. 227. It is unlikely in any event that the conversion incentive program would be effective if applied to industrial customers, given the \$200 limit.

*19 Cross-examination of the witnesses also sought to convey the impression that there was some uncertainty as to the details of the plan, or that Staff and Public Counsel disagreed with Tartan on some of the particulars of the plan. However, Tartan's witnesses clearly testified that the only change to the conversion incentive program from what it originally proposed was that one-half of the costs associated with the program would be the responsibility of the shareholders. It was also noted that some minor changes to the specimen tariffs dealing with the conversion incentive program might be necessary, but that this was a function of utilizing another company's tariffs as a starting point for its specimen tariffs, and that any needed corrections could be made prior to or during Staff's review of the actual tariffs filed.

The Commission has reviewed Tartan's application for a variance and the evidence adduced at the hearing, and is of the opinion that Tartan has demonstrated the requisite good cause for a variance. It is undenied that Tartan will be competing with an unregulated propane industry, or that the conversion incentive program could increase the conversion rate, which in turn would allow Tartan to spread its fixed costs over a larger base. With regard to the argument of 'entrapment,' a customer who converts under the conversion incentive program would be no worse off, and might be in a better situation, than a customer who converted after the expiration of the program and who bore the entire amount of initial conversion costs, in the event that both wanted to reconvert to their original fuel source.

As a practical matter, it is inevitable that some people will convert at an earlier point in time than others. The early converters enable the system to get up and running as quickly as possible, thus making future conversions more economic and efficient. The Commission deems the conversion incentive program to provide benefits to future customers, and thus it is not unduly discriminatory. The Commission further determines that the provision in the Stipulation providing for a 50-50 sharing of costs between ratepayers and shareholders is a reasonable compromise, and adequately addresses the concerns expressed by the Staff and the Public Counsel.

Although variance requests are reviewed by the Commission on a case-by-case basis, the Commission notes that the conversion incentive program proposed by Tartan is similar to other programs approved by the Commission in previous cases. See, e.g., Re the application of UtiliCorp United, Inc. d/b/a Missouri Public

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Service, Case No. GA-94-325 (Report and Order issued August 22, 1994), and Re the application of Fidelity Natural Gas, Inc., Case No. GA-91- 299 (Report and Order issued December 31, 1991).

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company has sought authority to do business as a public utility in the State of Missouri, and, therefore, would be subject to the general jurisdiction of the Commission pursuant to Chapters 386 and 393, RSMo 1986, as amended.

*20 The Commission has authority under Section 393.170, RSMo 1986 to grant permission and approval for the construction of gas plant and the exercise of a franchise relating thereto whenever the Commission determines after due hearing that such construction or franchise is necessary or convenient for the public service. The Commission also has authority under this section to impose such condition or conditions as it may deem reasonable and necessary.

Pursuant to Section 536.060, RSMo 1986, the Commission may also approve a stipulation and agreement concluded among the parties as to any issues in a contested case. The standard for Commission approval of a stipulation and agreement is whether it is just and reasonable. Since the Stipulation and Agreement was nonunanimous, the nonsignatory parties in this case have had an opportunity for due hearing through the presentation of their own witnesses and the cross-examination of the witnesses for the signatory parties with respect to both the original proposal before the Commission and the proposal as modified by the Stipulation.

Orders of the Commission must be based on competent and substantial evidence on the record as a whole, must be reasonable, and must not be arbitrary and capricious or contrary to law. In this regard, the Commission has considered all the competent, substantial, and relevant evidence in this matter and concludes that the Nonunanimous Stipulation is just and reasonable and should be adopted, subject to the conditions set forth in the body of this Report and Order, which conditions are intended to further clarify the provisions of the Stipulation as said provisions were explained during the hearing.

In addition, the Commission has authority to grant a variance from the Commission's rule on promotional practices pursuant to 4 CSR 240-14.010(2). The Commission concludes that Tartan should be granted a variance for its conversion incentive program under the terms agreed to in the Nonunanimous Stipulation and Agreement.

IT IS THEREFORE ORDERED:

1. That the Nonunanimous Stipulation and Agreement filed on July 22, 1994, and signed by Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, the staff of the Missouri Public Service Commission, and the Office of the Public

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Counsel, which is attached hereto as Attachment 1 and incorporated herein by reference, be and is hereby approved, subject to the conditions set forth in the body of this Report and Order.

2. That Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company be and is hereby granted a certificate of convenience and necessity authorizing it to construct, install, own, operate, control, manage, and maintain gas facilities and to render gas service in and to the residents of certain areas of Wright, Texas, Howell, Webster, Greene, and Douglas Counties, including the incorporated municipalities of Cabool, Houston, Licking, Mountain Grove, West Plains, Ava, Mansfield, Marshfield, and Willow Springs, Missouri, as well as Mountain View, Missouri if the franchise granted by Mountain View is ratified by its voters, subject to the limitations and conditions contained in the Nonunanimous Stipulation and Agreement and this Report and Order. Said certificate shall be in conformity with Attachment 2, attached hereto and incorporated herein by reference, which describes the service area by county, range, township, and section, and Attachment 3, attached hereto and incorporated herein by reference, which is a map which generally depicts the service area.

*21 3. That prior to the commencement of construction of any gas facilities in the State of Missouri, Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company shall file with the Missouri Public Service Commission all documents necessary to show compliance with the conditions set forth in the body of this Report and Order. Upon receipt of the above-referenced documents, the Staff shall -- as soon as possible but in no event later than thirty (30) days after receipt -- submit a brief report to the Commission, stating its recommendation as to whether the documents submitted show compliance with the conditions of this Report and Order. In the event Tartan is in compliance, the Commission shall issue an order authorizing construction immediately after receipt of Staff's report to that effect.

4. That in the operation of the above-stated service areas, Tartan Energy Company L.C., d/b/a Southern Missouri Gas Company shall use the nongas rates specified in the Nonunanimous Stipulation and Agreement and this Report and Order.

5. That Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company be and is hereby authorized to file tariffs in accordance with the provisions of the Nonunanimous Stipulation and Agreement and this Report and Order, effective for service on or after October 1, 1994.

6. That the certificate of convenience and necessity referenced in Ordered Paragraph #2 shall become effective simultaneously with the effective date of the tariffs required to be filed and approved pursuant to Ordered Paragraph #5.

7. That Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company be and is hereby granted a variance from the promotional practices rule of this Commission to the extent and limits as set forth in the Nonunanimous Stipulation and Agreement and this Report and Order.

8. That Tartan Energy Company, L.C., d/b/a Southern Missouri Energy Company be and is hereby authorized to account for one-half of the allowed \$200.00 maximum per customer conversion incentive program costs above-the-line, and include those

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costs in rate base, as set forth in the Nonunanimous Stipulation and Agreement and this Report and Order.

9. That the Commission makes no finding as to the prudence or ratemaking treatment to be given any costs or expenses incurred as the result of the granting of this certificate of convenience and necessity, except those costs and expenses dealt with specifically in the Nonunanimous Stipulation and Agreement and this Report and Order, and reserves the right to make any disposition of the remainder of those costs and expenses which it deems reasonable, in any future ratemaking proceeding.

10. That this order shall become effective on October 1, 1994.

(SEAL)

Dated at Jefferson City, Missouri, on this 16th day of September, 1994.

ATTACHMENT 1

STIPULATION AND AGREEMENT

On October 15, 1993, Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company ('Applicant'), filed an Application seeking a Certificate of Convenience and Necessity authorizing it to construct, install, own, operate, control, manage and maintain gas facilities and to render gas service as a local distribution company (LDC) in the incorporated municipalities of Cabool, Houston, Licking, Mountain Grove, Mountain View, West Plains, Ava, Mansfield, Marshfield, Seymour [FN1], Willow Springs, Missouri, and their environs in Wright, Texas, Howell, Webster, Greene and Douglas Counties.

*22 Applications to Intervene were timely filed by the following entities: (1) Conoco Inc. ('Conoco'); (2) Missouri Gas Energy, a division of Southern Union Company ('MoGE'); (3) West Plains Propane, Inc., Brotherton Propane, and PB's Propane ('Propane Dealers Group One'); (4) Missouri Gas Company ('MoGas'); (5) Empiregas, Inc. of Ava, Empiregas Inc. of Birch Tree, Empiregas Inc. of Houston, Empiregas, Inc. of Mountain Grove, Empiregas Inc. of Springfield, Empiregas Inc. of West Plains, Red Top Gas, Inc., Tri-County Gas Company, Ozark Gas & Appliance Co., RPA, Inc., Garrett's Propane Gas Service, Glen's Propane Gas Service, Inc., Tuttle Utility Gas Inc., Brooks Gas Company, Rees Oil Company, Smith Gas Company, Synergy Gas Corporation of Republic, Synergy Gas Corporation of Mountain Grove, Synergy Gas Corporation of Ava, Synergy Gas Corporation of Gainsville, Synergy Gas Corporation of Seymour, and Synergy Gas Corporation of Farmingdale, NY ('Propane Dealers Group Two'); and (6) Arkla Energy Resources Company ('Arkla'). On March 23, 1994, Williams Natural Gas Company ('WNG') filed its Application to Intervene after the Commission's February 3, 1994 deadline for intervention had expired.

On March 29, 1994, the Commission granted the Application to Intervene filed by all of the above-referenced entities, with the exception of WNG which was denied as untimely.

On June 15, 1994, City Utilities of Springfield, Missouri ('CU') filed its Motion to Intervene. On July 6, 1994, the Commission denied CU's Application as untimely.

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On April 15, 1994, Applicant filed its direct testimony and schedules. Applicant's Supplemental direct testimony was filed on May 16, 1994. The rebuttal testimony and schedules of the Commission Staff and Public Counsel were filed on June 24, 1994. The rebuttal testimony and schedules of Conoco, Propane Groups One and Two were filed on July 5, 1994.

On July 1, 1994, Applicant filed its First Amended Application clarifying the service area it seeks to serve and identifying with specificity its supply source interconnection.

The prehearing conference began on July 7, 1994, and continued through July 8, 1994 with the following parties present: James M. Fischer appearing for Applicant, William M. Shansey appearing for the Commission Staff, Susan Anderson appearing for the Office of the Public Counsel, Gary W. Duffy and Paul Boudreau appearing for Missouri Gas Energy, Richard W. French appearing for Propane Group One, and John Landwehr appearing for Conoco and Propane Group Two.

As a result of the prehearing conference, the parties to this Stipulation and Agreement have reached the following agreements and recommendations:

1. The Application of Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company for a Certificate of Convenience and Necessity, as amended and further clarified herein, authorizing it to construct, install, own, operate, control, manage and maintain gas facilities and to render retail natural gas service in the incorporated municipalities of Cabool, Houston, Licking, Mountain Grove, Mountain View, [FN2] West Plains, Ava, Mansfield, Marshfield, and Willow Springs, Missouri, and their environs in Wright, Texas, Howell, Webster, Greene and Douglas Counties should be granted.

*23 2. The Applicant agrees that the granting of the Certificate of Convenience and Necessity shall be conditioned upon the approval of tariffs by the Commission prior to the commencement of construction. Tariff issues to be resolved shall include but not be limited to the issues listed in Appendix A. The Certificate should become effective on the same date as the Applicant's tariffs become effective.

3. The Applicant agrees that the issuance of the Certificate will be conditioned upon their presentation to the Commission's Procurement Analysis Department of a signed firm transportation contract with Williams Natural Gas Company covering the production zone for 5,000 Mcfs per day, increasing to 10,000 Mcfs per day within three (3) years, and the market zone for 10,000 Mcfs per day prior to the approval of tariffs and the commencement of construction.

The Applicant understands that this agreement does not constitute prior approval of any excess capacity which may arise during future Actual Cost Adjustment (ACA) proceedings.

4. The attached depreciation rates (Appendix B) which are consistent with those recommended by Staff witness Guy C. Gilbert shall be adopted as the depreciation rates of the Applicant and are incorporated herein by reference. In addition to the above-referenced depreciation rates, the Applicant agrees to the following:

- a. The Applicant agrees to accrue and maintain its gas depreciation reserve by primary plant account.
- b. The Applicant shall maintain continuing property records and establish a

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property unit catalog pursuant to the conditions of 4 CSR 240-40.040.

c. The Applicant will file with the Manager of the Commission's Depreciation Department the information contained in subparagraphs a. and b. above within six (6) months of the effective date of the order granting a certificate in this proceeding.

5. The order granting a Certificate of Convenience and Necessity to the Applicant shall be based on the conditions proposed by Staff witness Hans Shieh as follows:

a. Successful completion of the required pressure test(s) and provisions for the Commission's Gas Safety Staff to be notified in advance and be given the opportunity to witness the construction and those tests;

b. The completion of the necessary construction in a proper manner by qualified personnel in conformance with sound engineering principles and applicable regulations;

c. The Applicant will submit to the Commission Staff for review and approval the Operations and Maintenance (O&M) Manual, including requirements for transmission O&M and the Drug Testing Program, prior to the start of construction;

d. Properly trained and qualified personnel be in place to operate the transmission and distribution system; and

e. This Stipulation and Agreement does not anticipate the construction of the propane peak shaving plant. If the volumes exceed 1,797,000 Mcf per year, as set in paragraph 7 below, the Applicant will submit final construction plans, O&M manuals and request that depreciation rates be set for the peak shaving plant before construction, assuming Applicant builds the peak shaving plant.

*24 6. The order granting a Certificate of Convenience and Necessity to the Applicant should also expressly permit Applicant to commence providing incidental service to customers as soon as possible, where facilities are completed and natural gas is otherwise available. The parties to this Stipulation and Agreement agree, however, that the accrual of depreciation expenses for each individual franchised community served will commence only after service is initiated for each individual franchised community.

7. The Applicant agrees that, absent the elimination of the Purchased Gas Adjustment Clause, it will file a rate case on or before the 2-year anniversary of the commencement of service in West Plains, Missouri. Applicant also agrees that a normalized volume level of at least 1,797,000 Mcf shall be used in this 2-year anniversary rate case, all subsequent rate cases and actual cost adjustment cases (ACA) for determining the appropriate rates. In the event the normalized test year volume level for the service area granted in this proceeding is less than 1,797,000 Mcf per year, Applicant agrees that revenues associated with this volume level shall be imputed in the 2-year anniversary rate case, all subsequent rate cases and ACA cases. Applicant will not defer those costs to a future rate proceeding. In the event that the normalized volume level for the service area granted in this proceeding exceeds 1,797,000 Mcf per year, the Applicant, Commission Staff and Public Counsel agree that this level of normalized test year volumes shall be utilized for establishing rates. Applicant also agrees that the provisions of this paragraph shall apply to its successors

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or assigns.

8. The Applicant also agrees that it will not seek approval from the Commission of more than \$24 million of total debt financing within two (2) years of the effective date of the order in this proceeding. In addition, the Applicant agrees that it will not issue long-term debt financing until such time as it has a minimum equity range in its capital structure of \$8 million to \$10 million. In the event that Applicant in the future seeks to expand its service area beyond the service area granted in this proceeding., Applicant reserves the right to seek Commission approval of additional levels of long- term debt financing. Applicant also agrees to seek and obtain a Resolution from the Board of Directors of Torch Energy Advisors, Inc. committing Torch Energy Advisors to issue a minimum Of \$15 million of equity to the Applicant or more if needed to supply sufficient equity to the Applicant to achieve a 40-42% common equity to total capital ratio and file such Resolution with the Commission. Within two (2) years of the issuance of the Certificate of Convenience and Necessity, the Applicant agrees to attain a targeted common equity to total capital ratio in the range of 40-42%. For calculation purposes, total capital will include common equity, and long-term and short-term debt. Notwithstanding the provision of paragraph 7, the Applicant agrees not to implement a general or limited increase in non-gas rates until the Applicant has attained the targeted common equity to total capital ratio. The Applicant reserves the right to request a waiver from the provision of this paragraph pertaining to the issuance of a minimum of \$15 million in equity, in the event that the total construction costs are less than \$40 million.

*25 9. On January 20, 1994, the Applicant filed in this proceeding a Request for Variance from the provisions of 4 CSR 240-14.020(1)(E), (F) and (H) with Suggestions in Support. The parties to this Stipulation and Agreement agree that Applicant's Request for Variance should be granted. However, Applicant agrees to book one-half (1/2) of its conversion costs below-the-line, for ratemaking purposes. The parties to this Stipulation and Agreement agree that the remaining one-half (1/2) of the conversion costs associated with the provision of piping or equipment on the customer side of the meter will be treated as a start-up cost and included in rate base for ratemaking purposes. In addition, Applicant also reserves the right to request that the promotional practice be abandoned in the future.

10. The parties to this Stipulation and Agreement agree that the following rates are reasonable and reflect the Applicant's non-gas costs.

Residential and General Service	
Customer Charge -- Residential	\$ 10.00 per month
Customer Charge -- General Service	\$ 15.00 per month
For all Ccfs used per month	\$ 0.307 per Ccf
Firm Large Volume and Firm Transportation Service	
Customer Charge	\$300.00 per month
Maximum Commodity Charge	\$ 0.293 per Ccf
Minimum Commodity Charge	\$ 0.01 per Ccf

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11. The Applicant also agrees to maintain the following information:
 - a. Applicant will maintain a Bill Frequency Analysis on the General Service and Residential tariff classes. Fifteen months of current information will be available at the time Applicant files a rate case. This information will include:
 - (1) Blocking at 10 Ccf intervals to 100 Ccf, 25 Ccf intervals to 500 Ccf, and 50 Ccf intervals to 1,500 Ccf.
 - (2) Absolute and cumulative number of bills ending in each interval.
 - (3) Absolute and cumulative Ccf usage ending in each interval.
 - b. Applicant will be able to provide individual customer information, including monthly usage, actual meter reading dates, and bill adjustments, on all Large Volume Service and Transportation Service customers.
 - c. Applicant will maintain the information in Accounts 376 so as to be able to provide the following information:

Account 376 -- Distribution Mains: Type Diameter Year of Installation Length Pipe Cost Total Installed Cost
 - d. Applicant will maintain the information in Accounts 380, 381 and 383 so as to be able to provide the following information by rate class:

Account 380 -- Distribution Services:

Type Diameter Year of Installation Number of Installations Length Pipe Cost Total Installed Cost

Account 381 -- Distribution Meters:

Type Capacity Year of Installation Quantity Meter Cost Total Installed Cost

Account 383 -- Distribution Regulators:

Type Capacity Year of Installation Quantity Regulator Cost Total Installed Cost
12. The Applicant agrees to establish, within one (1) year of the effective date of the order, personnel who will function as a gas supply department to oversee the gas supply policies, practices and procedures of Applicant.
- *26 13. That the prefiled testimony and schedules sponsored by Applicant's witnesses Tom M. Taylor, Michael N. Trusty and W. Scott Keith; Commission Staff witnesses Craig A. Jones, Phillip A. Irons, Anne E. Ross, David G. Winter, Hans Shieh, and Guy C. Gilbert; and Public Counsel witness Ryan Kind, shall be offered into evidence without the necessity of those witnesses taking the witness stand, unless requested to do so by a nonsignatory party.
14. That in the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties waive their respective rights to cross-examine the witnesses named in paragraph 13 with respect to their prefiled testimonies and schedules.
15. That in the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties waive their respective rights pertaining to the presentation of oral argument or filing of written briefs, pursuant to Section 536.080(1), RSMo 1986, as amended; and judicial review, pursuant to Section 386.510, RSMo 1986, as amended. However, in the event a nonsignatory party requests a hearing, the parties to the Stipulation and Agreement reserve their rights to present evidence, oral argument or written briefs and seek judicial review with regard to issues raised by the nonsignatory parties.
16. This Stipulation and Agreement represents a negotiated settlement for the

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sole purpose of disposing of all issues in this case. Signatories to this Stipulation and Agreement shall not be prejudiced or bound in any manner by the terms of this Stipulation and Agreement and any other proceeding for any purpose, except as otherwise specified herein. None of the parties to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any ratemaking principle or any method of cost determination or cost allocation underlying this Stipulation and Agreement.

17. The approval of this Stipulation and Agreement in its entirety and approval of tariffs by the Commission shall constitute the regulatory approval required by Chapter 393, RSMo 1986, for Applicant to construct, install, own, operate, control, manage and maintain natural gas facilities and to render retail natural gas service in and to residents of the incorporated municipalities of Cabool, Houston, Licking, Mountain Grove, West Plains, Ava, Mansfield, Marshfield, and Willow Springs, Missouri, and their environs in Wright, Texas, Howell, Webster, Green and Douglas Counties as proposed by Applicant.

18. That the agreements in this Stipulation and Agreement have resulted from extensive negotiations among the signatory parties and are interdependent. In the event the Commission does not approve or adopt this Stipulation and Agreement in total, or in the event the revised tariffs agreed to herein do not become effective in accordance with the provisions contained herein, this Stipulation and Agreement shall be void and no party shall be bound by any of the agreements or provisions hereof.

*27 WHEREFORE, the parties to this Stipulation and Agreement respectfully request from the Commission the following: (1) that the Commission approve the Stipulation and Agreement in its entirety; (2) that the Commission grant Applicant's Application for a Certificate of Convenience and Necessity, as amended and clarified herein, conditioned upon the safety requirements contained in paragraph 5 of this Stipulation and Agreement; and (3) that the Commission approve the depreciation rates reflected in Appendix B and require Applicant to file tariffs for Commission approval prior to the commencement of construction. Respectfully submitted,

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APPENDIX A

TARTAN ENERGY COMPANY d/b/a SOUTHERN MISSOURI GAS

Tariff Issues

. Rates and Rate Design . Definition of customer classes . Metes and bounds
description in tariffs with small map . Transportation tariffs
-- transition costs -- imbalance provisions -- backup service
. Special contract provisions . Electronic metering devices . PGA Clause
-- Order 636 related issues -- threshold level for new PGA -- 15 day notice for
PGA filings -- transition cost -- resale of contract demand -- interim Actual
Cost Adjustment -- 12-month period over which ACA will be calculated -- refund
balance required to start refund -- interest on refunds -- PGA computational
volumes
. Miscellaneous fees . Interest on deposits . New Chapter 13 rules . New 'Cold
Weather' rules . Priority levels for curtailment . Main and service line free
allowances . Conversion policy

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ATTACHMENT 2

EXHIBIT 3 SOUTHERN MISSOURI GAS COMPANY SERVICE AREA BY COUNTY, RANGE, TOWNSHIP
AND SECTION

GREENE COUNTY

*28 From an origin point alongside County Road 193 in the north 1/2 of Section
23, Township 28N, Range 21 W, running north along (in) the County Road 193 right
of way to an intersection with the U.S. Highway 60 right of way in that same
section, thence east along (in) the Highway 60 right of way which lies along the
section line boundary between Sections 14 and 23 T28N R21 W, 13 and 24 T28N R21W,
18 and 19 T28N R20W, 17 and 20 T28N R20W, 16 and 21 T28N R20W, 15 and 22 T28N
R20W, & 14 and 23 T28N R20W, to the westernmost boundary of a service area which
encompasses, in Greene County, sections 13, 24 and 25 T28N R20W. (The portion of

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the corporate limits of Rogersville lying in Greene County is not included in the proposed service area).

WEBSTER COUNTY

A service area which includes: T28N RI9W Sections:

1,2,9,10,11,12,13,14,15,16,17,18,19,20,2 T29N RI9W Section: 36 T28N R18W

Sections: 1,2,3,4,5,6,7,8,9,10,18 T29N RI8W Sections:

1,2,3,4,9,10,11,12,13,14,15,16,22,23,24,, 33,34,35,36 T30N RI8W Sections:

1,2,3,4,5,6,7,8,9,10,11,14,15,16,17,18,2, 33,34,35,36 T31N R18W Sections:

31,32,33,34,35 T28N RI7W Sections: 1,2,3,4,5,6,10,11,12,13,14 T29N RI7W Sections:

18,19,20,21,25,26,27,28,29,30,31,32,33,3 T28N R16W Sections:

5,6,7,8,9,16,17,18,19,20,21

This service area does not include the corporate limits of: Rogersville, Fordland, Diggins, and Seymour that lie within Webster County.

WRIGHT COUNTY

A service area which includes: T28N R16W Sections:

10,11,12,13,14,15,22,23,24,25,26,27,36 T28N R15W Sections:

7,8,9,10,11,12,13,14,15,16,17,18,19,20,2, 29,30,31,32,33 T28N R14W Sections:

1,7,8,9,10,11,12,13,14,15,16,17,18,19,20, 28,29,30 T28N R13W Sections:

1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,1 T29N R13W Sections: 35,36 T28N R12W

Sections: 4,5,6,7,8,9,16,17,18

This service area includes the corporate limits of: Mansfield and portions of Mountain Grove that lie within Wright County. It does not include the corporate limits of Norwood.

DOUGLAS COUNTY

A service area which includes: T27N R15W Sections:

4,5,6,7,8,9,16,17,18,19,20,30,31 T27N R16W Sections:

1,12,13,14,23,24,25,26,27,34,35,36 T26N R16W Sections:

1,2,3,4,9,10,11,12,13,14,15,16,21,22,23,

This service area includes the corporate limits of Ava.

TEXAS COUNTY

A service area which includes: T28N R12W Sections: 1,2,3,10,11,12 T29N R12W

Sections: 25,26,27,34,35,36 T28N R11W Sections:

1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,1 T29N R11W Sections:

29,30,31,32,33,34,35,36 T29N R10W Sections:

1,2,3,4,8,9,10,11,12,14,15,16,17,19,20,2, 30,31,32,33,34 T28N R10W Sections:

4,5,6,7,8,16,17,18,19,21,22,26,27,28,29, T30N R9W Sections:

2,3,4,5,6,7,8,9,10,11,16,17,18,19,20,21, T30N R10W Sections:

1,12,13,24,25,26,34,35,36 T31N R9W Sections:

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1,2,3,10,11,12,13,14,15,16,20,21,22,23,2, 33,34,35 T31N R8W Sections: 6,7,16 T32N R9W Sections: 1,2,11,12,13,14,23,24,25,26,35,36 T32N R8W Sections:

5,6,7,8,17,18,19,20,29,30,31,32 T33N R9W Sections: 35,36 T33N RSW Sections: 31,32

*29 This service area includes the corporate limits of: portions of Mountain Grove, Cabool, Houston and Licking that lie within Texas County.

HOWELL COUNTY

A service area which includes: T27N R10W Sections:

1,2,3,4,5,9,10,11,12,13,14,15,22,23,24,2 T27N R9W Sections:

6,7,8,17,18,19,20,21,22,23,24,25,26,27,2, 35,36 T27N R8W Sections:

13,14,15,16,19,20,21,22,23,24,25,26,27,2, 34,35,36 T27N R7W Sections:

8,9,10,11,12,13,14,15,16,17,18,19,20,21,, 28,29,30,31,32,33,34,35,36 T26N R9W

Sections: 1,2,3,4,5,6,7,8,9,10,11,12,14,15,16,17,1, 26,27,28,29,33,34,35,36 T26N

R8W Sections: 4,5,6 T25N R9W Sections: 1,2,3,4,9,10,11,12,13,14,15,16,21,22,23,,

35,36 T25N RSW Sections: 30,31 T24N R9W Sections:

1,2,11,12,13,14,23,24,25,26,35,36 T24N RSW Sections:

2,3,4,5,6,7,8,9,10,11,14,15,16,17,18,19,, 28,29,30,31,32,33,34,35 T26N R10W

Section: 1 T23N R8W Sections: 2,3,4,5,6 T23N R9W Sections: 1,2

This service area includes the corporate limits of Willow Springs, Mountain View and West Plains that lie within Howell County.

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FOOTNOTES

Report and Order

FN1 All future references are to cities or counties within the State of Missouri, unless otherwise noted.

Stipulation and Agreement

FN1 Seymour was excluded from the Application since a franchise has not been granted to the Applicant by the municipality of Seymour.

FN2 The Certificate of Convenience and Necessity to serve Mountain View shall be contingent upon the voter ratification of the franchise granted to the Applicant, prior to the commencement of construction of the distribution system in Mountain View. Construction of the distribution system in Mountain View is not expected to commence until the late Spring of 1995. The Applicant will file with the Commission the results of the election when available. Mountain View and Ava have passed bond elections in anticipation of constructing municipally- owned systems in these communities. However, the Applicant has agreed, as a part of this Stipulation and Agreement, to provide retail service only. Ava has also adopted a franchise which has been duly ratified by its voters granting the Applicant a franchise as a local distribution company.

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